



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 29, 1994

Ms. Mercedes Leal
Senior Assistant County Attorney
Harris County
1001 Preston, Suite 634
Houston, Texas 77002-1891

OR94-784

Dear Ms. Leal:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 27573.

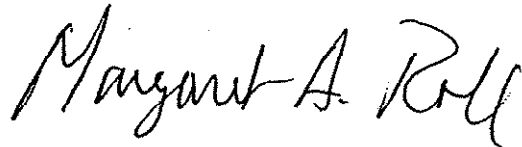
Harris County (the "county") received an open records request for the requestor's personnel file, including certain audiotaped telephone conversations. We addressed the availability of most of the requested information in Open Records Letter Ruling 94-313 (1994) (copy enclosed), but declined to address the audiotapes before a determination from your office that they fall within the ambit of the open records request. You have since determined that the audiotapes, which you have submitted to us for review, are responsive to the request. You indicate that you have released one of the requested audiotapes. However, you are seeking to withhold the remaining audiotapes under sections 552.103(a) and 552.108 of the Government Code.

We conclude that the county may withhold the submitted audiotapes from disclosure under section 552.103(a). To secure the protection of section 552.103(a), a governmental body must demonstrate that a judicial or quasi-judicial proceeding is pending or reasonably anticipated and that the requested information relates to that judicial or quasi-judicial proceeding. Open Records Decision No. 555 (1990) at 2. In this instance you have made the required showing that the audiotapes relate to anticipated litigation for purposes of section 552.103(a). Here the requestor has filed charges of sexual harassment and sexual discrimination with the Equal Employment Opportunity Commission and the state Commission on Human Rights. These charges are expected to culminate in litigation with the county as a defendant in the litigation. Therefore, the audiotapes may be withheld under section 552.103(a).

In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the information at issue and that the litigation is still pending. Absent special circumstances, once information has been obtained by all parties to the litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). Moreover, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Therefore, if the requestor has previously had access to any of the information that may be excepted from disclosure under section 552.103(a), then you may not withhold that information under section 552.103(a). Similarly, if the requestor's charges have been resolved, you may not withhold any of the information you submitted for review under section 552.103(a).¹

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/GCK/rho

Ref.: ID# 27573

Enclosures: Submitted audiotapes
Open Records Letter Ruling 94-313

¹We note that some of the information that may be protected by section 552.103(a) may also be protected by common-law privacy under section 552.101. For example, the identities of the victims of and witnesses to sexual harassment will generally be private under section 552.101. See *Morales v. Ellen*, 840 S.W.2d 519, 524-25 (Tex. App.—El Paso 1992, writ denied).